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Attorneys for Plaintiff  
VERIGY US, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VERIGY US, INC, a Delaware Corporation

Plaintiff,

vs.

ROMI OMAR MAYDER, an individual;  
WESLEY MAYDER, an individual; SILICON  
TEST SYSTEMS, INC., a California Corporation;  
and SILICON TEST SOLUTIONS, LLC, a  
California Limited Liability Corporation,  
inclusive,

Defendants.

Case No.

**STIPULATED PROTECTIVE ORDER**

Complaint Filed:

Trial Date:

None Set

1           **1.     PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
7 all disclosures or responses to discovery and that the protection it affords extends only to the  
8 limited information or items that are entitled under the applicable legal principles to treatment as  
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
10 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil  
11 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will  
12 be applied when a party seeks permission from the court to file material under seal.

13           **2.     DEFINITIONS**

14           2.1     Party: any party to this action, including all of its officers, directors,  
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16           2.2     Disclosure or Discovery Material: all items or information, regardless of the  
17 medium or manner generated, stored, or maintained (including, among other things, testimony,  
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
19 discovery in this matter.

20           2.3     “Confidential” Information or Items: information (regardless of how  
21 generated, stored or maintained) or tangible things that qualify for protection under standards  
22 developed under F.R.Civ.P. 26(c).

23           2.4     “Highly Confidential – Attorneys’ Eyes Only” Information or Items:  
24 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or  
25 nonparty would create a substantial risk of serious injury that could not be avoided by less  
26 restrictive means.

27           2.5     Receiving Party: a Party that receives Disclosure or Discovery Material  
28 from a Producing Party.

1           2.6     Producing Party: a Party or non-party that produces Disclosure or  
2     Discovery Material in this action.

3           2.7.    Designating Party: a Party or non-party that designates information or items  
4     that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
5     Confidential — Attorneys' Eyes Only."

6           2.8     Protected Material: any Disclosure or Discovery Material that is designated  
7     as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

8           2.9.    Outside Counsel: attorneys who are not employees of a Party but who are  
9     retained to represent or advise a Party in this action.

10          2.10    House Counsel: attorneys who are employees of a Party.

11          2.11    Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
12     their support staffs).

13          2.12    Expert: a person with specialized knowledge or experience in a matter  
14     pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
15     witness or as a consultant in this action and who is not a past or a current employee of a Party or  
16     of a competitor of a Party's and who, at the time of retention, is not anticipated to become an  
17     employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
18     trial consultant retained in connection with this litigation.

19          2.13    Professional Vendors: persons or entities that provide litigation support  
20     services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
21     organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
22     subcontractors.

### 23           3.     SCOPE

24           The protections conferred by this Stipulation and Order cover not only Protected Material  
25     (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
26     excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
27     parties or counsel to or in court or in other settings that might reveal Protected Material.

1           **4. DURATION**

2           Even after the termination of this litigation, the confidentiality obligations imposed by this  
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
4 otherwise directs.

5           **5. DESIGNATING PROTECTED MATERIAL**

6           5.1     Exercise of Restraint and Care in Designating Material for Protection. Each  
7 Party or non-party that designates information or items for protection under this Order must take  
8 care to limit any such designation to specific material that qualifies under the appropriate  
9 standards. A Designating Party must take care to designate for protection only those parts of  
10 material, documents, items, or oral or written communications that qualify – so that other portions  
11 of the material, documents, items, or communications for which protection is not warranted are  
12 not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized  
13 designations are prohibited. Designations that are shown to be clearly unjustified, or that have  
14 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
15 development process, or to impose unnecessary expenses and burdens on other parties), expose the  
16 Designating Party to sanctions. If it comes to a Party's or a non-party's attention that information  
17 or items that it designated for protection do not qualify for protection at all, or do not qualify for  
18 the level of protection initially asserted, that Party or non-party must promptly notify all other  
19 parties that it is withdrawing the mistaken designation.

20           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
21 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
22 material that qualifies for protection under this Order must be clearly so designated before the  
23 material is disclosed or produced. Designation in conformity with this Order requires:

24                   (a)     for information in documentary form: (apart from transcripts of  
25 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" at the top  
27 of each page that contains protected material. If only a portion or portions of the material on a  
28 page qualifies for protection, the Producing Party also must clearly identify the protected

1 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
2 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY  
3 CONFIDENTIAL – ATTORNEY EYES ONLY").

4 A Party or non-party that makes original documents or materials available  
5 for inspection need not designate them for protection until after the inspecting Party has indicated  
6 which material it would like copied and produced. During the inspection and before the  
7 designation, all of the material made available for inspection shall be deemed "HIGHLY  
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
9 documents it wants copied and produced, the Producing Party must determine which documents,  
10 or portions thereof, qualify for protection under this Order, then, before producing the specified  
11 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or  
12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that  
13 contains Protected Material. If only a portion or portions of the material on a page qualifies for  
14 protection, the Producing Party also must clearly identify the protected portion(s) (e.g. by making  
15 appropriate markings in the margins) and must specify, for each portion, the level of protection  
16 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
17 EYES ONLY").

18 (b) for testimony given in deposition or in other pretrial or trial  
19 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the  
20 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,  
21 and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL –  
22 ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of  
23 testimony that is entitled to protection, and when it appears that substantial portions of the  
24 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
25 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to  
26 have up to 20 days to identify the specific portions of the testimony as to which protection is  
27 sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY  
28 CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are

1 appropriately designated for protection within the 20 days shall be covered by the provisions of  
2 this Stipulated Protective Order. Transcript pages containing Protected Material must be separately  
3 bound by the court reporter, who must affix to the top of each such page the legend  
4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as  
5 instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

6 (c) for information produced in some form other than documentary, and  
7 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
8 the container or containers in which the information or item is stored the legend  
9 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only  
10 portions of the information or item warrant protection, the Producing Party, to the extent  
11 practicable, shall identify the protected portions, specifying whether they qualify as "Confidential"  
12 or as "Highly Confidential – Attorneys' Eyes Only."

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
14 to designate qualified information or items as "Confidential" or "Highly Confidential – Attorneys'  
15 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection  
16 under this Order for such material. If material is appropriately designated as "Confidential" or  
17 "Highly Confidential – Attorneys' Eyes Only" after the material was initially produced, the  
18 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
19 that the material is treated in accordance with the provisions of this Order.

## 20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's  
22 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
23 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
24 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
25 promptly after the original designation is disclosed.

26 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
27 Party's confidentiality designation must do so in good faith and must begin the process by  
28 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)



1 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
2 for its belief that the confidentiality designation was not proper and must give the Designating  
3 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no  
4 change in designation is offered, to explain the basis for the chosen designation. A challenging  
5 Party may proceed to the next stage of the challenge process only if it has engaged in this meet  
6 and confer process first.

7           6.3     Judicial Intervention. A Party that elects to press a challenge to a  
8 confidentiality designation after considering the justification offered by the Designating Party may  
9 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
10 applicable) that identifies the challenged material and sets forth in detail the basis for the  
11 challenge. Each such motion must be accompanied by a competent declaration that affirms that the  
12 movant has complied with the meet and confer requirements imposed in the preceding paragraph  
13 and that sets forth with specificity the justification for the confidentiality designation that was  
14 given by the Designating Party in the meet and confer dialogue. The burden of persuasion in any  
15 such challenge proceeding shall be on the Designating Party. Until the court rules on the  
16 challenge, all parties shall continue to afford the material in question the level of protection to  
17 which it is entitled under the Producing Party's designation.

## 18           7.     **ACCESS TO AND USE OF PROTECTED MATERIAL**

19           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
20 disclosed or produced by another Party or by a non-party in connection with this case only for  
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
22 disclosed only to the categories of persons and under the conditions described in this Order. When  
23 the litigation has been terminated, a Receiving Party must comply with the provisions of section  
24 11, below (FINAL DISPOSITION). Protected Material must be stored and maintained by a  
25 Receiving Party at a location and in a secure manner that ensures that access is limited to the  
26 persons authorized under this Order.

1                   7.2     Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated CONFIDENTIAL only to:

4                   (a)     the Receiving Party's Outside Counsel of record in this action, as  
5 well as employees of said Counsel to whom it is reasonably necessary to disclose the information  
6 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
7 attached hereto as Exhibit A;

8                   (b)     the officers, directors, and employees (including House Counsel) of  
9 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
10 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

11                  (c)     experts (as defined in this Order) of the Receiving Party to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
13 Bound by Protective Order" (Exhibit A);

14                  (d)     the Court and its personnel;

15                  (e)     court reporters, their staffs, and professional vendors to whom  
16 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
17 Bound by Protective Order" (Exhibit A);

18                  (f)     during their depositions, witnesses in the action to whom disclosure  
19 is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
20 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
21 Protected Material must be separately bound by the court reporter and may not be disclosed to  
22 anyone except as permitted under this Stipulated Protective Order.

23                  (g)     the author of the document or the original source of the information.

24                   7.3     Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
25 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
26 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY  
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:



1 (a) the Receiving Party's Outside Counsel of record in this action, as  
2 well as employees of said Counsel to whom it is reasonably necessary to disclose the information  
3 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
4 attached hereto as Exhibit A;

5 (b) Experts (as defined in this Order) (1) to whom disclosure is  
6 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by  
7 Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4,  
8 below, have been followed;

9 (c) the Court and its personnel;

10 (d) court reporters, their staffs, and professional vendors to whom  
11 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
12 Bound by Protective Order" (Exhibit A); and

13 (e) the author of the document or the original source of the information.

14 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –  
15 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

16 (a) Unless otherwise ordered by the court or agreed in writing by the  
17 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any  
18 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'  
19 EYES ONLY" first must make a written request to the Designating Party that (1) identifies the  
20 specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to  
21 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
22 primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's  
23 current employer(s), (5) identifies each person or entity from whom the Expert has received  
24 compensation for work in his or her areas of expertise or to whom the expert has provided  
25 professional services at any time during the preceding five years, and (6) identifies (by name and  
26 number of the case, filing date, and location of court) any litigation in connection with which the  
27 Expert has provided any professional services during the preceding five years.

1 (b) For the first 30 days after filing of the complaint, a Party that makes  
2 a request and provides the information specified in the preceding paragraph may disclose the  
3 subject Protected Material to the identified Expert unless, within three court days of delivering the  
4 request, the Party receives a written objection from the Designating Party. Thirty one (31) days  
5 after filing of the complaint a Party that makes a request and provides the information specified in  
6 the preceding paragraph may disclose the subject Protected Material to the identified Expert  
7 unless, within seven (7) court days of delivering the request, the Party receives a written objection  
8 from the Designating Party. Any such objections must set forth in detail the grounds on which it is  
9 based.

10 (c) A Party that receives a timely written objection must meet and  
11 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the  
12 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the  
13 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local  
14 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must  
15 describe the circumstances with specificity, set forth in detail the reasons for which the disclosure  
16 to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and  
17 suggest any additional means that might be used to reduce that risk. In addition, any such motion  
18 must be accompanied by a competent declaration in which the movant describes the parties'  
19 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
20 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve  
21 the disclosure. In any such proceeding the Party opposing disclosure to the Expert shall bear the  
22 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
23 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
25 **OTHER LITIGATION**

26 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
27 would compel disclosure of any information or items designated in this action as  
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the

1 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
2 and in no event more than three court days after receiving the subpoena or order. Such notification  
3 must include a copy of the subpoena or court order. The Receiving Party also must immediately  
4 inform in writing the Party who caused the subpoena or order to issue in the other litigation that  
5 some or all the material covered by the subpoena or order is the subject of this Protective Order. In  
6 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to  
7 the Party in the other action that caused the subpoena or order to issue. The purpose of imposing  
8 these duties is to alert the interested parties to the existence of this Protective Order and to afford  
9 the Designating Party in this case an opportunity to try to protect its confidentiality interests in the  
10 court from which the subpoena or order issued. The Designating Party shall bear the burdens and  
11 the expenses of seeking protection in that court of its confidential material – and nothing in these  
12 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
13 disobey a lawful directive from another court.

#### 14 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
16 Material to any person or in any circumstance not authorized under this Stipulated Protective  
17 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
18 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
19 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
20 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
21 Be Bound” that is attached hereto as Exhibit A.

#### 22 **10. FILING PROTECTED MATERIAL**

23 Without written permission from the Designating Party or a court order secured after  
24 appropriate notice to all interested persons, a Party may not file in the public record in this action  
25 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
26 with Civil Local Rule 79-5.

#### 27 **11. FINAL DISPOSITION**

1 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
2 after the final termination of this action, each Receiving Party must return all Protected Material to  
3 the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
4 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
5 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
6 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
7 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
8 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
9 deadline that identifies (by category, where appropriate) all the Protected Material that was  
10 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
11 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected  
12 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
13 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,  
14 even if such materials contain Protected Material. Any such archival copies that contain or  
15 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
16 (DURATION), above.

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
19 person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
21 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
22 producing any information or item on any ground not addressed in this Stipulated Protective  
23 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
24 the material covered by this Protective Order.

25 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

26 Dated: August 24, 2007

BERGESON, LLP

27 By:   
28

1 John W. Fowler  
2 Attorneys for Plaintiff  
3 VERIGY US, INC.

4 Dated: August 24, 2007

Mount & Stoelker P.C.

6  
7  
8 By: 

9 Daniel S. Mount, Esq

10 Kevin M. Pasquinelli Esq.  
11 Attorneys for Defendants  
12 ROMI OMAR MAYDER, SILICON TEST  
13 SYSTEMS, INC., and WESLEY MAYDER

14 \*VIA FACSIMILE\*

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16  
17 DATED: \_\_\_\_\_

18 [name of judge]

19 United States District/Magistrate Judge  
20  
21  
22  
23  
24  
25  
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27  
28

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and  
understand the Stipulated Protective Order that was issued by the United States District Court for  
the Northern District of California on [date] in the case of \_\_\_\_\_ [insert formal name of the  
case and the number and initials assigned to it by the court]. I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is subject to  
this Stipulated Protective Order to any person or entity except in strict compliance with the  
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number]  
as my California agent for service of process in connection with this action or any proceedings  
related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_ [printed name]

Signature: \_\_\_\_\_ [signature]